

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

ROBERT FIREMAN and ANN RAIDER,

Plaintiffs,

v.

Civil Action No. 05-11740-MLW

NEWS AMERICA MARKETING IN-STORE,  
INC.,

Defendant.

**DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

Pursuant to Rule 56, Fed R. Civ. P., defendant News America Marketing In-Store, Inc. ("NAM") hereby moves that summary judgment be entered in its favor on all counts of plaintiffs' complaint.

The claims in this lawsuit arise from the sale of the plaintiffs' business to NAM pursuant to the terms of a written Stock Purchase Agreement (the "Agreement"). The Agreement defines the entire universe of obligations between the parties, expressly permits NAM to operate plaintiffs' former company "in its sole and unfettered judgment," and states that the plaintiffs "shall have no claim against [NAM] in connection" with its operation of the company.

Despite this clear contractual language, the plaintiffs allege through this lawsuit that NAM's operation of their former company violated the implied covenant of good faith and G.L. c. 93A because NAM's management prevented them from receiving the proper amount of earn-out and bonus money under the Agreement. These claims have no merit.

The undisputed material facts in this case establish that the plaintiffs, who are sophisticated business people, expressly bargained away their right to assert the very claims they are now pursuing through Section 6.8 of the Agreement, which gave NAM "unfettered"

discretion to run their former company in any way that it saw fit and expressly forbade the plaintiffs from suing NAM in connection with their business decisions.

Even if this were not the case, the plaintiffs' claims would still have no merit because the summary judgment record is completely barren of any evidence to establish that NAM acted with bad faith or an intent to deprive the plaintiffs' of earn-out payments.

For these reasons, and for other reasons that are more particularly described in NAM's Memorandum of Law, NAM is entitled to the entry of summary judgment in its favor on all of the plaintiffs' claims.

In further support of its motion, NAM relies on its Rule 56.1 Statement, its Memorandum of Law, and the affidavits, documents, and deposition testimony contained in its Exhibit Binder supporting the within motion for summary judgment.

NEWS AMERICA MARKETING IN-  
STORE, INC.

By its attorneys,

/s/ Gordon P. Katz

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Dated: October 31, 2007  
Boston, Massachusetts

**CERTIFICATE PURSUANT TO LOCAL RULES 7.1**

I, Gordon P. Katz, hereby certify pursuant to Rule 7.1 of the Local Rules of the United States District Court for the District of Massachusetts that I discussed on October 25, 2007, the within motion with Kevin Peters, counsel for Robert Fireman and Ann Raider, and he stated that he opposed the motion's allowance.

/s/ Gordon P. Katz  
Gordon P. Katz

**CERTIFICATE OF SERVICE**

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on this 31<sup>st</sup> day of October, 2007.

/s/ Gordon P. Katz  
Gordon P. Katz

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